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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PHILLIPS PETROLEUM COMPANY, *Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

JOINT BRIEF OF APPELLEES

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INDEX

Page

Opinions Below 1

Jurisdiction 2

Statutes and Constitutional Provisions Involved 2

Questions Presented 2

Statement of the Case 3

A. The Parties and Proceedings Before the Corporation Commission of Oklahoma 3

B. The Increase in the Minimum Price 5

C. The Formula Applicable to Gas Sold in the Field During or at the Conclusion of Gathering 9

D. The Commission's Order and the Opinion of the Supreme Court of Oklahoma 12

Summary of Argument 15

Argument 18

I. The Order Here is not Invalid under the Commerce Clause by Reason of the Provisions Relating to Sales of Gas Made in the Field during Gathering or at the Conclusion of Gathering and Processing 18

A. This Court Held in Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179, That the Commerce Clause Does not of its Own Force Invalidate State Minimum Price Regulation of Gas Sold Interstate 18

B. This Court's Decision in the Cities Service Case Treated the Order There as Applicable to All Gas Produced in the Field and not as Limited to Gas Sold at the Wellhead 23

C. The Formula Applicable to Sales of Gas after Gathering and Processing is an Appropriate and Reasonable Exercise of the State's Power to Establish Minimum Prices in the Interests of Conservation and Should be Upheld for That Reason 25

II. The Natural Gas Act Does not Deprive the State of Oklahoma of the Power to Conserve Natural Gas by Minimum Price Regulation of All Gas Produced in the Field Including the Gas Produced and Delivered by Panoma 31

Page

A. This Court Should Uphold the Validity of Order No. 26,096 so as to Preserve Both the Plan of Regulation Envisaged by the Natural Gas Act and the Conservation Powers of the State 31

B. A Decision Upholding Order No. 26,096 Will Achieve the Intent of Congress to Protect and Preserve the Conservation Powers of the States 41

Conclusion 48

CITATIONS

Cases:

Algoma Plywood Co. v. *Wisconsin Employment Relations Board*, 336 U.S. 301 41
Buck v. *California*, 343 U.S. 99 35
Bandini Petroleum Co. v. *Superior Court, Los Angeles County, Calif.*, 284 U.S. 8 44
California v. *Zook*, 336 U.S. 725 41
Champlin Refining Co. v. *Corporation Commission of Oklahoma*, 286 U.S. 210 44
Cities Service Gas Co. v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279 (1950), 340 U.S. 179 ....4, 13, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27, 29, 31, 37, 47, 48
Federal Power Commission v. *Hope Natural Gas Co.*, 320 U.S. 591 41
Federal Power Commission v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 .....32, 39, 40, 41, 43
Geer v. *Connecticut*, 161 U.S. 519 45
Henderson Co. v. *Thompson*, 300 U.S. 258 44
Illinois Natural Gas Co. v. *Central Illinois Public Service Co.*, 314 U.S. 498 32
Interstate Natural Gas Co. v. *Federal Power Commission*, 331 U.S. 682 .....17, 32, 35, 40, 41
Milk Control Board v. *Eisenberg Farm Products*, 306 U.S. 346 26
Milk Wagon Drivers Union v. *Meadowmoor Dairies, Inc.*, 312 U.S. 287 7
Minneapolis & St. Louis R.R. Co. v. *Minnesota*, 193 U.S. 53 .. 7
Missouri v. *Kansas Natural Gas Co.*, 265 U.S. 298 45
Natural Gas Pipeline Co. v. *Corporation Commission*, 272 P. 2d 425 (1954) 1, 6, 7, 11, 12, 13, 14, 15, 49
Natural Gas Pipeline Co. v. *Panoma Corporation*, 271 P. 2d 354 (1953) 4
New York Rapid Transit Corp. v. *New York*, 303 U.S. 573 .. 28

Page

New York ex rel. Silz v. *Hesterberg*, 211 U.S. 31 45
Northern Natural Gas Co., FPC Docket Nos. G-1382, G-1533, G-1607 34
Ohio Oil Company v. *Indiana* (No. 1), 177 U.S. 190 44
Panhandle Eastern Pipe Line Co. v. *Michigan Public Service Commission*, 341 U.S. 329 .....18, 32, 35, 36, 37, 38
Panhandle Eastern Pipe Line Co. v. *Public Service Commission, of Indiana*, 332 U.S. 507 .....37, 38, 39
Parker v. *Brown*, 317 U.S. 341 .....29, 30, 35
Pennekamp v. *Florida*, 328 U.S. 331 7
Phillips Petroleum Co. v. *Oklahoma*, 340 U.S. 190 .....4, 10, 13, 16, 23, 24, 30
Phillips Petroleum Co. v. *Wisconsin*, 347 U.S. 672 .....15, 17, 31, 40, 47, 48
Public Utilities Commission v. *Attleboro Steam & Electric Co.*, 273 U.S. 83 45
Public Utilities Commission of Ohio v. *United Fuel Gas Co.*, 317 U.S. 456 32
Simpson v. *Shepard* (*The Minnesota Rate Cases*), 230 U.S. 352 36
South Carolina State Highway Department v. *Barnwell Brothers, Inc.*, 303 U.S. 177 .....26, 30, 45
Southern Wisconsin Railway v. *Madison*, 240 U.S. 457 28
State Corporation Commission of Kansas v. *Federal Power Commission*, 206 F. 2d 690 (8th Cir. 1954), cert. denied 346 U.S. 922 .....18, 34
Thompson v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55 .. 44
Walls v. *Midland Carbon Co.*, 254 U.S. 300 44

Federal Legislation:

Agricultural Marketing Agreement Act (50 Stat. 246, 7 U.S.C. § 601 *et seq.*) 35
Constitution, Art. I, Sec. 8, Cl. 3 .....2, 3, 16, 18, 19, 20, 29, 44
Constitution, Amendment XIV 10, 19, 44
Interstate Commerce Act Sections 13(3), 13(4) (41 Stat. 484 (1920); 49 U.S.C. §§ 13(3), 13(4)) 36
Natural Gas Act (Act of June 21, 1938, ch. 556, 52 Stat. 821, as amended by Act of February 7, 1942, ch. 49, 56 Stat. 83, Act of July 25, 1947, ch. 333, 61 Stat. 459, Act of March 27, 1954, 68 Stat. 36), 15 U.S.C. § 717 *et seq.* 2, 3, 16, 17, 19, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 44, 46, 47, 49

Federal Legislative Documents:

Report of Federal Trade Commission pursuant to Sen. Res. 83, 70th Cong., 1st Sess. (1928) 41
H. R. Rep. 2651, 74th Cong., 2nd Sess. 42

Page

H. R. Rep. 709, 75th Cong., 1st Sess. 42, 43
Sen. Rep. No. 1162, 75th Cong., 1st Sess. 42
Sen. Rep. No. 1460, 82nd Cong., 2d Sess. 42
Sen. Rep. No. 817, 83rd Cong., 1st Sess. 42
H. R. Rep. No. 899, 83rd Cong., 1st Sess. 42
Cong. Rec. Vol. 81 43

State Statutes and Orders:

1913 Gas Act and 1915 Natural Gas Act of the State of Oklahoma (Oklahoma Statutes, Tit. 52, §§ 231, 232, 233, 234, 239, 240 and 243 (1951) 2, 27
Oklahoma Corporation Commission Order No. 19,514 ..4, 6, 8, 10, 15, 16, 18, 19, 21, 23, 27, 37
Oklahoma Corporation Commission Order No. 26,096 ..2, 3, 8, 12, 13, 15, 16, 17, 21, 26, 27, 28, 29, 31, 33, 40, 41, 48

IN THE

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OCTOBER TERM, 1954

No. 321

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CERTAIN MINERAL OWNERS IN TEXAS COUNTY, OKLAHOMA, and PHILLIPS PETROLEUM COMPANY, *Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

JOINT BRIEF OF APPELLEES

OPINIONS BELOW

The opinion of the Supreme Court of Oklahoma (R. 165-188) is reported at 272 P. 2d 425. The findings and order of the Corporation Commission of the State of Oklahoma (R. 132-137) are unreported.

JURISDICTION

The basis for jurisdiction is adequately stated in appellant's brief.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent provision of the United States Constitution is the Commerce Clause, Article I, § 8, Clause 3. The pertinent provisions of the Natural Gas Act (Act of June 21, 1938, ch. 556, 52 Stat. 821, as amended, 15 U.S.C. § 717 *et seq.*) are set forth in Appendix A. The pertinent provisions of the 1913 Gas Act and 1915 Natural Gas Act of the State of Oklahoma (Oklahoma Statutes Title 52 §§ 231, 232, 233, 234, 239, 240 and 243) and Order No. 26,096 of the Corporation Commission of the State of Oklahoma, effective August 1, 1952, are set forth in Appendix B.

QUESTIONS PRESENTED

Upon application of certain mineral royalty owners in Texas County, Oklahoma, and after hearings, appellee Corporation Commission of Oklahoma made findings and issued Order No. 26,096, effective August 1, 1952, which is the order challenged in this appeal. The order reads in part as follows (R. 136-137):

> "1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less

than 9.8262¢ per thousand cubic foot plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.'"[1]

The questions presented are:

1. Whether the Commerce Clause of the United States Constitution of its own force invalidates Order No. 26,096 as applied to the Panoma Corporation which produces and gathers natural gas, processes it for the extraction of liquid hydrocarbons and then delivers the residue gas at the outlet of its processing plant to appellant Natural Gas Pipeline Company for transmission and resale interstate.

2. Whether the Natural Gas Act (15 U.S.C. § 717 *et seq.*) deprives the State of Oklahoma of the power to apply Order No. 26,096 to the natural gas delivered by Panoma Corporation to appellant Natural Gas Pipeline Company as described above.

STATEMENT OF THE CASE

A. The Parties and Proceedings Before the Corporation Commission of Oklahoma

In 1947 the Corporation Commission of Oklahoma, upon application of the Peerless Oil & Gas Company, the School Land Commission of the State of Oklahoma and certain royalty owners, determined that the taking of natural gas from the Guymon-Hugoton Field at the prices then prevalent resulted in economic and physical waste, inequitable taking of gas and discrimination against various producers. It therefore

[1] Residue gas is the term applied to natural gas after it has been dehydrated and the liquid hydrocarbons removed.

ordered that no gas should be taken out of the producing structures or formations of the Guymon-Hugoton Field at a price at the wellhead of less than 7¢ per thousand cubic feet (R. 235-242).[2] This order was appealed to the Supreme Court of Oklahoma and upheld there. *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279 (1950). The decision of the Oklahoma court was unanimously affirmed by this Court in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179. See also *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190.

In January 1952 certain mineral owners in Texas County, Oklahoma, filed an Application before the Corporation Commission, alleging that although some gas was being produced in the field at the price of 7¢ in accordance with the Commission's order, recent negotiated sales had been made at a price equal to not less than 9.8262¢ at the wellhead. The Application asked that the Commission enter a new order fixing a minimum price for the sale, purchase and acquisition of gas produced from the Guymon-Hugoton Field (R. 10). Among other things the Application alleged that a higher price would prevent waste, that the present price situation caused unlawful discrimination between producers, that the gas was worth not less than 10¢ per thousand cubic feet and that the

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[2] The application of the 7¢ order to the transactions between Panoma Corporation and appellant Natural Gas Pipeline Company was upheld by the Supreme Court of Oklahoma in Natural Gas Pipeline Co. v. Panoma Corporation, 271 P. 2d 354 (1953). The appeal from that decision of the Supreme Court of Oklahoma is now pending in No. 191 in this Court. Appellant Natural Gas Pipeline Company filed a joint brief in its behalf in No. 191 and in this case. Because a different order, different issues and different appellees are involved in the two cases, appellees here and in No. 191 are filing separate briefs.

7¢ order was vague and uncertain in fixing a method by which the minimum could be realized (R. 10).

The Corporation Commission held hearings on this Application on February 20 and 21, 1952 and July 8 and 9, 1952 (R. 132). Various interstate transmission companies—appellant Natural Gas Pipeline Company, Panhandle Eastern Pipe Line Company, Michigan-Wisconsin Pipe Line Company, Northern Natural Gas Company, and Cities Service Gas Company—appeared at the hearings in opposition to the order. Phillips Petroleum Company entered an appearance neither supporting nor opposing the increase in the minimum price but urging that any order entered establish with clarity a formula informing producers not selling at the wellhead how to comply with it (R. 79). In addition, counsel appeared on behalf of the Office of Price Stabilization, the staff of the Corporation Commission, and the Applicants (R. 11).

During the hearing witnesses testified and documentary evidence was introduced on behalf of the Applicants (Exhs. 11-21; R. 12-66, 203-213) and in support of the position of Phillips Petroleum Company (Exhs. 33-40; R. 67-126, 215-224). The other interested parties, including appellant Natural Gas Pipeline Company, although producing no witnesses, filed responses to the Application, entered into stipulations on evidentiary matters and otherwise participated in the hearings (Exhs. 47-50; R. 126-132, 138-143, 243-275).

B. The Increase in the Minimum Price

On the basis of the evidence before it the Corporation Commission made the following findings, among others, on the necessity for an increase in the minimum price (R. 134-136):

(a) The taking of gas from the Guymon-Hugoton Field at the then prevalent prices and terms resulted in economic and physical waste and discriminated against various producers (R. 134).

(b) The price of 7¢ for gas from the Guymon-Hugoton Field was "no longer adequate to prevent waste and protect the correlative rights of the parties therein and insure the development of and production from all of said common sources of supply during the time that facilities for the transportation from said Field to the market will be available" (R. 135).

(c) Commodity values in general and the use value of gas in particular had increased since the 7¢ order to such a point that the production and sale of gas in the Guymon-Hugoton Field at any price less than 9.8262¢ measured at the wellhead constituted and caused physical and economic waste (R. 134).

The evidence supporting these findings was reviewed by the Supreme Court of Oklahoma and the findings of the Commission upheld (R. 167-171, 174). The court's summary of the evidence reads in part as follows (R. 173-174):

"There is substantial evidence to the effect that the prevalent price of raw gas in this field (seven cents per thousand cubic feet as fixed by previous order) will not, under present economic conditions prevailing, such as cost of labor and materials, permit the drilling of wells in fringe areas, resulting in non-development of the field, migration of gas to wells in production to the loss of

> landowners in fringe areas, and incomplete exhaustion of the gas-bearing structures, all to the loss of landowners, producers, and the State of Oklahoma generally. Such facts constitute both physical and economic waste and amply justify the Commission's order on that factor. Certainly such facts clearly show inequitable taking from the common source of supply, irreparable harm to correlative rights of owners, loss to royalty owners, and loss to the State and are sufficient to sustain the interest of the state in correcting such abuses."

Neither the Commission's findings on the need for an increase in the minimum price of gas produced in the Guymon-Hugoton Field in the interest of conservation nor the affirmation of those findings by the Supreme Court of Oklahoma appear to be challenged by appellant on this appeal.[3] In any case the findings of the Commission are fully supported by substantial evidence. The proof showed that since the last order of the Commission there had been a change in circum-

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[3] There is no assertion in the questions presented in the brief of appellant (Brief p. 3) that any findings of the Corporation Commission of Oklahoma are not supported by substantial evidence and no attack is made on the order in this case under either the due process or the equal protection clauses of the Fourteenth Amendment. Furthermore, appellant has no basis for asking this Court to review or to evaluate the evidence supporting the findings of the Corporation Commission, affirmed as they are by the Supreme Court of Oklahoma. *Cf.*, Pennekamp v. Florida, 328 U.S. 331, 345; Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 312 U.S. 287, 294; Minneapolis & St. Louis R.R. Co. v. Minnesota, 193 U.S. 53, 64.

stances requiring a higher minimum.[4] Since that time the cost of production of natural gas had risen and the market demand for gas had increased substantially (R. 54). These factors caused economic upward pressure on the price. In addition, an increase in the price of gas was shown to tend to conserve gas and prevent physical and economic waste (R. 57). The higher price would allow marginal wells on the fringe of the field to be developed which could not profitably be developed at a lower price (R. 27-28, 57-58). Higher prices would make less wasteful methods of production economically feasible and this would tend to eliminate the physical waste caused by the necessity of blowing out wells (R. 26-27). The time factor was important. A higher price for gas was necessary at the time to insure proper development of the marginal areas of the field. If fringe wells were not drilled soon, part of the gas might migrate and be taken through existing wells. This would cause loss to the fringe owners. In addition, however, much of the gas could not be recovered through the existing wells. If fringe wells were not drilled prior to the abandonment of the rest of the field there would be by that time little recoverable gas left and probably no marketing facilities available to take what was left (R. 27-28, 57-58).

The evidence also showed that since the issuance of the 7¢ order the price of all industrial fuels other than natural gas had increased substantially (Exhs. 11-21;

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[4] As stated at pp. 3-4, *supra*, the Corporation Commission had previously fixed the minimum price at which gas could be produced from the Guymon-Hugoton Field at 7¢ per thousand cubic feet at the wellhead (Exh. 44; R. 235-242). Both the 7¢ order and the present order based the price on gas measured at a pressure of 14.65 pounds absolute pressure per square inch (R. 137, 242).

R. 26, 48-49, 203-213). In comparison with the other common industrial fuels—coal, residual, crude oil, kerosene and gasoline—natural gas had been and continued to be the most desirable and at the same time the cheapest fuel per energy content unit (R. 26). Yet the gap between the costs of natural gas and the costs of the other fuels had increased since 1946 (Exhs. 13, 17; R. 205, 209).

Finally, the proof showed that the price mentioned in the Application—9.8262¢ per thousand cubic feet at the wellhead—would not be in excess of the actual value of the gas in the Guymon-Hugoton Field but would correspond to that value as evidenced by the more recent contracts (R. 55-56). That was the price specified, for example, in a contract recently negotiated between the Northern Natural Gas Company and the American Gas Production Company for gas produced in the Guymon-Hugoton Field (R. 54-55).[5] The testimony contained various estimates of prices above 10¢ which would be fair prices for the gas. These ranged from 12.64¢ per thousand cubic feet (R. 49) to a price of between 25¢ to 30¢, a price which would be comparable on an energy content basis with that of other industrial fuels (R. 43).

C. The Formula Applicable to Gas Sold in the Field During or at the Conclusion of Gathering

In addition to the proof establishing the need for an increase in the minimum price of gas in the Guy-

[5] The figures given in the testimony refer to a price of 11¢ per thousand cubic feet measured on the basis of a pressure of 16.4 pounds absolute pressure per square inch (R. 55). This amounts to 9.8262¢ per thousand cubic feet measured on the basis of 14.65 pounds absolute pressure per square inch, which is the measure used by the Corporation Commission.

mon-Hugoton Field the Commission received evidence on the need, as a practical matter, for the Commission to establish in the order a formula which could be followed by producers who sell in the field during or at the conclusion of gathering rather than at the wellhead.[6] This evidence related both to the methods by which gas is produced and sold in the Guymon-Hugoton Field and to the reasonableness of the particular formula which was ultimately incorporated in the order.

On the basis of this evidence the Commission made findings which read in part as follows (R. 135-136):

> "That only a small portion of the gas produced in said Field is actually sold or delivered at the wellhead and in all those instances where such sale and delivery does not occur at the wellhead, it will be necessary for the producer to determine whether or not it is realizing the equivalent of the minimum price fixed by this order; that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons and the residue then sold during or at the conclusion of gathering; * * * that, on the average and considering the fluctuations in value of said liquid hydrocarbons, the value realized by such producer from the sale or use of said liquid hydrocarbon does not exceed the cost of gathering and processing said gas, including a

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[6] The prior 7¢ order of the Commission had been attacked by Phillips Petroleum Company on the ground that because the order omitted to include any such formula it was so vague and indefinite that it violated the Fourteenth Amendment. That attack was rejected by this court in Phillips Petroleum Company v. Oklahoma, 340 U.S. 190.

reasonable allowance for depreciation and return on investment; and that such producers, to realize a price for such gas equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead, must receive for such processed gas a price of not less than 9.8262 cents per thousand cubic feet measured at a pressure base of 14.65 psia at a temperature of 60° F."

The Supreme Court of Oklahoma reviewed the evidence (R. 171-172) and accepted these findings (R. 174). The court said in part (R. 174):

"To have any regulation at all, to insure that all gas produced from the structures in this field shall be sold at the same minimum price it was necessary to fix the price of residue gas and the evidence is substantial to show that such price must be the same as that of raw gas to attain this end. See *Phillips Petroleum Co.* v. *Oklahoma,* 340 U.S. 190, 71 S. Ct. 221, 95 L. ed. 204.

"These findings of the Commission are supported by basic facts and the order of the Commission is based on substantial evidence."

Appellant does not appear to challenge these findings of the Commission on the ground that they are not supported by the evidence or to contend that the Supreme Court of Oklahoma erred in accepting the findings. Those contentions if made would find no support in the record because the findings were fully supported by the evidence. A summary of the more important evidence follows:

Only about 12.4% of the allowable production from the Guymon-Hugoton Field is sold at the wellhead (R.

125). Panoma Corporation, the sole supplier in the Guymon-Hugoton Field to appellant Natural Gas Pipeline Company, does not make any deliveries of gas at the wellhead (Exhs. 47-48; R. 127-128, 247-271). Phillips Petroleum Company, one of the largest producers in the Field, does not sell any gas at the wellhead with the possible exception of gas from one well in which it owns a minor interest (R. 69). Both Panoma and Phillips, as well as at least one other company in the Field, gather their gas after production through a network of converging pipelines to a central point where it is processed for the extraction of liquid hydrocarbons and to make the residue salable. The gas is then delivered at the outlet of the processing plant for transmission to consuming areas (Exh. 47; R. 71-76, 94, 127-128).

In operations such as those of Panoma and Phillips, the value of the liquid hydrocarbons extracted from the gas on the average approximately offsets the costs of the gathering and processing operation (Exh. 39; R. 112, 114-116, 118-121, 223). For example, in 1951 the spread between the costs of gathering and processing and the gross income from the extracted liquids in Phillips' case was less than a quarter of a cent per thousand cubic feet of gas (Exh. 39; R. 223). During some periods at one plant these costs actually exceeded the income from liquids (R. 116). The testimony showed that Phillips' cost and income figures would be typical for other producers conducting similar operations (R. 104, 119).

D. The Commission's Order and the Opinion of the Supreme Court of Oklahoma

On the basis of all this evidence and its findings, the Corporation Commission entered Order No. 26,096, which is quoted in part at pages 2-3, *supra*. The order

was challenged by appellant Natural Gas Pipeline Company and by Michigan-Wisconsin Pipe Line Company and Panhandle Eastern Pipe Line Company by Petitions in Error filed in the Supreme Court of Oklahoma (R. 1-8). That court upheld the order in an opinion filed April 27, 1954, with one justice concurring specially and four justices dissenting (R. 178).

The petitioners in the Supreme Court of Oklahoma contended in part that Order No. 26,096 was not supported by the evidence and was beyond the power of the Corporation Commission (R. 172). These contentions were rejected by the Supreme Court of Oklahoma (R. 174, 178). The statutory power of the Corporation Commission to issue the order is not challenged here and it appears from appellant's statement of the questions presented in its brief that it does not contest the evidentiary support for the findings (Brief p. 3).

In addition, the petitioners in the Supreme Court of Oklahoma attacked the order under the Commerce Clause, both as an unconstitutional regulation of interstate commerce and as imposing an unlawful embargo on interstate commerce. The Supreme Court of Oklahoma ruled in favor of the Corporation Commission on this contention also. It said that the cases of *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, were conclusive on the power of the Commission to fix a minimum price as a condition precedent to the taking of natural gas (R. 175). It also considered and upheld the formula established by the order applicable to a producer selling not at the wellhead but at the conclusion of gathering and after the extraction of the liquid hydrocarbons. On this subject the court said in part (R. 175-177):

> "The only new question presented here is: may the Commission establish a method or formula by

which it can be ascertained whether a producer who does not sell raw gas at the wellhead obtains the equivalent of the fixed minimum price of raw gas as taken from the structures? and if so and to implement the obtaining of such equivalent price can the Commission add to the cost of raw gas which is not processed before sale but is sold off the lease the reasonable cost of gathering, or in case the raw gas is processed for the removal of liquid hydrocarbons before actual delivery to the purchaser, fix the price of the residue gas being only one constituent of the raw gas, so delivered? * * *

* * *

"It seems self-evident and axiomatic that if the Commission has the power to regulate by fixing minimum prices it has the power to establish a formula and method by which it may be ascertained and determined whether all producers in the field are obtaining such minimum price, as it is their inescapable duty to do. It is only necessary that a formula or method so established be reasonable and practically effective to carry out the purpose for which it is made. * * *

* * *

"All parties concede that under the cases above the Commission can fix the price of gas as taken from the structure. If it can fix the price of the whole it can fix the price of all the parts constituting the whole. If it is not practically feasible to fix the price of all the parts constituting the whole it can fix the price of that constituent which can be controlled, provided it does it in a reasonable manner and so that the overall purpose is

carried out. Under the evidence it seems that the Commission established the only formula which it could establish that would be workable and not be discriminatory or arbitrary. * * *"

The decision of the Supreme Court of Oklahoma was announced on April 27, 1954 (R. 165) prior to the decision of this Court in *Phillips Petroleum Co.* v. *Wisconsin,* 347 U.S. 672. The issue of the effect of that decision was raised by an amended petition for rehearing filed July 2, 1954 by Michigan-Wisconsin Pipe Line Company and appellant Natural Gas Pipeline Company (R. 193-194). The petition for rehearing was denied without opinion on July 13, 1954 (R. 198).

Natural Gas Pipeline Company, Panhandle Eastern Pipe Line Company, and Michigan-Wisconsin Pipe Line Company filed separate appeals to this Court on August 7, 1954 (R. 199-201). On November 8, 1954 this Court noted probable jurisdiction in this case, which involves only the application of Order No. 26,096 to the gas delivered by Panoma Corporation to appellant Natural Gas Pipeline Company (R. 285). No order noting probable jurisdiction or otherwise has been entered in the appeals of either Michigan-Wisconsin Pipe Line Company (No. 320) or Panhandle Eastern Pipe Line Company (No. 322).

SUMMARY OF ARGUMENT

I.

In 1946 the State Corporation Commission of Oklahoma promulgated an order forbidding the taking of gas from the Guymon-Hugoton Field at a price at the wellhead of less than 7¢ per thousand cubic feet. That order was upheld by this Court in *Cities Service*

Gas Co. v. *Peerless Oil & Gas Co.*, 340 U.S. 179, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190. The order did not expressly set a formula to be followed by producers who sold not at the wellhead but during or at the conclusion of gathering and after the extraction of liquid hydrocarbons, even though it was construed to apply, and in fact applied, to such producers. *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190. The present order establishes such a formula. In this respect the only difference between the two orders, therefore, is that the order challenged in this case makes explicit what was true by construction of the order upheld in the *Cities Service* case. It is this difference that is relied upon by appellant.

The Corporation Commission found, and it is not questioned here, that the formula established in the present order was necessary to the achievement of the purpose of the order. This finding is sufficient to uphold the validity of the order under the Commerce Clause unless the *Cities Service* case is to be overruled. The local interest protected by the order is the interest of the State of Oklahoma in the conservation of its natural resources and the prevention of the economic and physical waste of natural gas. The price order which protects that interest in this case is reasonable and necessary and appropriately related to the interest protected, and should be upheld for that reason.

II.

The price order being proper under the Commerce Clause as such, the only remaining question before this Court is whether Congress has enacted legislation which deprives Oklahoma of its otherwise valid conservation powers. It is contended by appellant that Congress has done this by the Natural Gas Act as

interpreted by this Court in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, because that case construed the Natural Gas Act as granting to the Federal Power Commission jurisdiction to fix the rates on sales of gas in interstate commerce such as those made here by Panoma Corporation to appellant Natural Gas Pipeline Company. This argument misconceives the nature of the Oklahoma regulation. It is a conservation order fixing minimum prices applied to the production of natural gas and not an order imposing the kind of regulation authorized by the Natural Gas Act. The argument also misconceives the intention of Congress in passing the Natural Gas Act. Congress did not intend to intrude Federal power at all into the field of conservation in which Oklahoma's price order is effective. On the contrary, Congress expressly and specifically intended not to invade that field. Under the Natural Gas Act federal authority is confined to public utility regulation of maximum rates in the interests of the consumer. The Natural Gas Act should be construed so as to preserve both the state conservation power and the federal utility regulation.

It may be that in the future in specific instances federal rate and service regulation may conflict with particular state conservation measures regulating the production of natural gas, or that state regulations may interfere with or hamper federal regulation. In the event such a conflict does arise in the future, this Court may then have to decide whether Congress intended the state or the federal order to prevail. *Cf. Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 690. There are, however, no opposing directives and no conflict present in this case. In the light of the history of the Natural Gas Act this Court should not presume such a conflict will arise or

attempt to predetermine it. On the contrary, the resolution of such conflicts should wait until they occur in a specific situation with existing opposing directives. If this is done the conflicts can be resolved without general disruption of either state or federal power. See *Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Commission*, 341 U.S. 329, 336. *Cf. State Corporation Commission of Kansas* v. *Federal Power Commission*, 206 F. 2d 696 (8th Cir. 1954), cert. denied 346 U.S. 922.

ARGUMENT

I.

THE ORDER HERE IS NOT INVALID UNDER THE COMMERCE CLAUSE BY REASON OF THE PROVISIONS RELATING TO SALES OF GAS MADE IN THE FIELD DURING GATHERING OR AT THE CONCLUSION OF GATHERING AND PROCESSING.

A. THIS COURT HELD IN CITIES SERVICE GAS CO. v. PEERLESS OIL & GAS CO., *340 U.S. 179, THAT THE COMMERCE CLAUSE DOES NOT OF ITS OWN FORCE INVALIDATE STATE MINIMUM PRICE REGULATION OF GAS SOLD INTERSTATE*

The type of conservation regulation which is under attack in this case was upheld five years ago by the unanimous decision of this Court in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179. Many of the issues which are raised here are determined by the decision in that case.

Order No. 19,514 of the Corporation Commission of Oklahoma which was before this Court in the *Cities Service* case provided in part as follows (R. 242):

> "* * * no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma at a price, at the wellhead, of less than 7¢

per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch."

This order was coupled with an order requiring Cities Service Gas Company to purchase ratably from Peerless Oil & Gas Company at a price of 7¢. Cities Service was shown to be a natural gas company, as defined in the Natural Gas Act, engaged in the business of producing natural gas and transporting it interstate. Practically all of the gas produced and purchased by Cities Service in Oklahoma went into interstate commerce. The order was also generally applicable to all producers in the Guymon-Hugoton Field, about 90% of the total production of which was ultimately consumed in states other than the State of Oklahoma. See *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, 181.

In 1950 the Supreme Court of Oklahoma sustained Order No. 19,514 against contentions that it violated, among other things, the Fourteenth Amendment and the Commerce Clause of the Constitution. *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279 (1950). On appeal, this Court unanimously affirmed the decision of the Oklahoma court. *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179.

That ruling is controlling on the question of the basic validity under the Commerce Clause of state minimum price regulation as a method of conservation. The *Cities Service* opinion expressly considers and rejects several of the arguments advanced by appellant here in its attack on the constitutional power of the State of Oklahoma to effectuate minimum price regulation in the Guymon-Hugoton Field.

For example, appellant argues (Brief pp. 21-25)

that the Commerce Clause of its own force invalidates the order here because there is an overriding national interest in the free interstate flow of natural gas which automatically precludes any assertion of state power. In rejecting this argument the Court said in the *Cities Service* case (340 U.S. at 187-188):

> "That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. * * *
>
> "We recognize that there is also a strong national interest in natural gas problems. But it is far from clear that on balance such interest is harmed by the state regulations under attack here. * * * Insofar as conservation is concerned, the national interest and the interest of producing states may well tend to coincide. In any event, in a field of this complexity with such diverse interests involved, we cannot say that there is a clear national interest so harmed that the state price-fixing orders here employed fall within the ban of the Commerce Clause."

Appellants also appear to argue that the order is invalid because there is evidence in the record that some royalty owners might benefit from it (Brief pp. 23-25, 26). A parallel argument was advanced and considered in the *Cities Service* case. The Court said (340 U.S. at 187):

> "The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a state-wide interest in conservation."

Finally appellant urges that Order No. 26,096 is invalid even under the criteria of the *Cities Service* case because its effect is to discriminate against and place an embargo on interstate commerce (Brief pp. 25-28). In making this argument, appellant relies primarily on the undisputed fact that most of the gas produced in the Guymon-Hugoton Field is ultimately consumed in states other than the State of Oklahoma. From this fact appellant argues that the purpose of the minimum price order must be to discriminate against interstate commerce because there is no showing that there is any minimum price order applicable to other fields in the State of Oklahoma from which less gas is ultimately taken out of the State.

This argument is without merit. The fact that the State Corporation Commission has not set minimum prices in fields other than the Guymon-Hugoton Field is not proof of discrimination against interstate commerce. There is no proof in the record on the age of other fields, on conditions in them, on the number of fields involved or on the precise price levels prevailing in them. In addition, there is no evidence on the conservation problems raised in other fields, and particularly on the different conservation problems raised by the development of oil fields as against dry gas fields such as the Guymon-Hugoton Field. Finally, the contention that the 7¢ order discriminated against interstate commerce was raised and rejected in the *Cities Service* case[7] and on this issue also the Court's

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[7] This Court in summarizing the contentions made by the appellant in that case in the Supreme Court of Oklahoma noted that the appellant argued that "* * * the general rule applying only to the Guymon-Hugoton Field, discriminates against those producing or purchasing in that field." (340 U.S. at p. 184).

holding there is controlling in this case (340 U.S. at 188).

Moreover, this issue is not properly before this Court and was not even before the Supreme Court of Oklahoma. In its Petition in Error in the Supreme Court of Oklahoma appellant Natural Gas did not assign as error that the Corporation Commission intended to discriminate, or had discriminated, against interstate commerce (R. 1-8). The portion of the Petition in Error which relates to the Commerce Clause makes no comparison between the Guymon-Hugoton Field and other producing fields, and does not suggest that the fact that the order relates solely to that Field establishes a discrimination against interstate commerce (R. 7). In this Court neither the notice of appeal nor the jurisdictional statement states the question presented in terms that raise any question of discrimination; they rather both use terms applicable to any order in any field.[8]

It thus appears that appellant's argument is in part an attempt to revive issues that are foreclosed by the decision of this Court in the *Cities Service* case. No further consideration of those contentions seems necessary. We turn therefore to appellant's contention that the present order is invalid because, unlike

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[8] The statement of the questions presented does not mention the Guymon-Hugoton Field but simply states broadly that the question is whether the Corporation Commission has the power "to fix the price of residue gas sold at the outlet of a gasoline plant to an interstate pipeline company for immediate transportation to markets in other states, or to prohibit the production of natural gas if the price fixed for residue gas obtained therefrom is not obtained" (R. 201). Not even the form of the question stated to be presented in appellant's brief expressly raises any question of discrimination (Brief p. 3).

the order in the *Cities Service* case, it expressly prescribes a formula to determine whether a producer, such as Panoma, who delivers gas at the end of gathering and processing has obtained the equivalent of the prescribed minimum price.

B. THIS COURT'S DECISION IN THE CITIES SERVICE CASE TREATED THE ORDER THERE AS APPLICABLE TO ALL GAS PRODUCED IN THE FIELD AND NOT AS LIMITED TO GAS SOLD AT THE WELLHEAD

Although the 7¢ minimum price order which was involved in the *Cities Service* case contained no formula applicable to field sales made away from the wellhead that order was applied not only to sales at the wellhead, but to all sales in the field, including sales made at the conclusion of gathering and after processing. This was known to the Court at the time it decided the *Cities Service* case. In a companion case, *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, this Court was faced with and decided constitutional claims grounded on the fact that the order was applicable to Phillips Petroleum Company which was selling not at the wellhead but at the conclusion of gathering and after the extraction of liquid hydrocarbons. This Court upheld the application of the order to Phillips. In doing so it noted the fact that Phillips' sales were sales of residue gas to an interstate transmission company made after processing and at the conclusion of gathering (340 U.S. at 191). The Court said that these distinctions did not make any legal difference. The opinion reads in part (340 U.S. at 192):

> "The distinction is without a difference: the connection between realized price and conservation applies to all production in the field, whether owners purchase from others or not, and whether

> they own pipe lines or not. In a field which constitutes a common reservoir of gas, the Commission must be able to regulate the operations of all producers or there is little point in regulating any."

No question under the Commerce Clause was raised in the *Phillips* case. Nevertheless, the existence of that case shows that the Court was aware when it decided the *Cities Service* case that the order was applicable to and was in fact applied to sales of residue gas made after processing.

The Court's knowledge of this point is indicated in its opinion in the *Cities Service* case. At the beginning of the opinion the Court stated the issue as relating to "the power of a State to fix prices at the wellhead on natural gas produced within its borders and sold interstate." (340 U.S. at 180). This language does not refer to gas "sold at the wellhead". In fact, two sentences later the Court's language shows that the order was not limited to gas sold at the wellhead. The Court said that the order "set a minimum wellhead price on *all* gas taken from the Guymon-Hugoton Field" (emphasis supplied). The word "all" in this sentence must be read in the light of the fact that there was at the same time before the Court the fact situation presented in the *Phillips* case, in which the major point was that the gas involved was residue gas not sold at the wellhead. In other portions of its opinion the Court refers to "the field price of gas" as having a direct bearing on conservation (340 U.S. at 182), to a "general order setting a minimum price in the field" (340 U.S. at 185), to "existing low field prices" as resulting in economic waste (340 U.S. at 186), to the "field price as herein set" as having little effect on the

domestic delivered price (340 U.S. at 187) and again to the price regulation as applicable to "*all* gas taken from the field" (340 U.S. at 188). These constant references to the "field price" of gas and the two references to the order as applying to "all gas" in the field cannot be reconciled with the contention of appellant that the Court was treating the order as if it applied only to gas sold at the welhead and did not apply to residue gas sold in the field at the conclusion of gathering and after processing.

Furthermore, the reasoning by which the Court reached its conclusion did not depend upon any distinction between sales made at the wellhead and sales made in the field at the end of gathering and processing. The Court regarded the case as turning on the relationship between the legitimate local interest of the state in conserving a natural resource and the national interest in interstate commerce in natural gas. It appraised this relationship on the basis of the relevant economic considerations and without regard to whether field sales of natural gas were made at the wellhead or at some other location in the field. It would be inconsistent with the stated basis for the decision to assume that the Court would have decided the case differently if the particular sale before it had been a sale after gathering and processing rather than a sale at the wellhead.

C. THE FORMULA APPLICABLE TO SALES OF GAS AFTER GATHERING AND PROCESSING IS AN APPROPRIATE AND REASONABLE EXERCISE OF THE STATE'S POWER TO ESTABLISH MINIMUM PRICES IN THE INTERESTS OF CONSERVATION AND SHOULD BE UPHELD FOR THAT REASON

On any view of its scope the *Cities Service* case establishes that the state possesses power to fix minimum prices for gas in the interests of conservation

and that the power may be validly applied to gas destined for interstate markets. This power of the state to fix minimum prices at the wellhead in the interests of conservation carries with it the authority to adopt reasonable and appropriate measures to make that power effective. See *Milk Control Board* v. *Eisenberg Farm Products*, 306 U.S. 346, 352; *South Carolina State Highway Department* v. *Barnwell Bros., Inc.*, 303 U.S. 177, 190. On the facts the instant order is such a reasonable and appropriate measure.

The evidence before the Corporation Commission showed that most gas in the Guymon-Hugoton Field is not sold at the wellhead (R. 135). It also showed that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons and that the residue is then sold during or at the conclusion of gathering (*ibid.*). The Commission found that "a minimum price order cannot be made fully effective and discrimination prevented without a means provided for determining the manner in which the amount [may be] realized for gas by producers operating gathering and processing plants" (R. 136). Appellant does not challenge the evidence or this finding.

In the light of this evidence and finding the Corporation Commission had to adopt some formula to be applied to gas sold away from the wellhead and after processing as is the situation in the case of the sales by Panoma to appellant. Otherwise no minimum price order in the Guymon-Hugoton Field could be effective. The formula which the Commission did adopt is neither arbitrary nor unreasonable. It is unrealistic to view it, as appellant does, as if it were some form of price regulation apart from and performing a different function from the one performed by the rest of the order.

The order in its entirety, including the formula relating to sales made after gathering and processing, is a regulation of production. It was issued under a state statute which authorizes regulation of the "taking" of natural gas from the structures of the field. That statute is a part of a comprehensive plan for the regulation of production in the interests of conservation, a plan which has existed for the last four decades.[9]

The order imposes upon the producer a condition to the taking of gas from structures of the field. Its purpose is to prevent the production of gas unless the producer is first assured of a market at the price specified in the order. The fact that the condition is stated in terms of a minimum price applicable after the gas is taken from the ground makes the order no less a regulation of production. It is not unusual for conservation measures directed to production to be phrased in terms of the use to be made of the gas after it leaves the ground. This is true for example of regulations prohibiting the flaring of gas or its use for the manufacture of carbon black, measures which have long been recognized as appropriate conservation regulations of production.

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[9] The Corporation Commission acted under Sections 239 and 243 of Title 52 of the Oklahoma statutes. These sections authorize the Commission to "regulate the taking of natural gas" to prevent waste and to "make regulations for the prevention of waste of natural gas." The related sections of Title 52 provide for the ownership of unproduced gas, for the protection of correlative rights, and for ratable taking and proration orders. Title 52, Sections 231-233, 240. See Cities Service Gas Co. v. Peerless Oil & Gas Co., 203 Okla. 35, 220 P. 2d 279 (1950), affirmed 340 U.S. 179, upholding the prior 7¢ order as a regulation of the taking of gas under these statutes.

The true character of the order is not obscured by the fact that in this case Panoma has agreed to deliver the gas to appellant after gathering and processing rather than at the wellhead (Exh. 48; R. 247-271). That agreement, like most such agreements, in the producing field, provides for the production of gas; it affects the legal status of gas which is still in the ground and it does so even before the gas wells are drilled.[10] The order affects the contract only because of its impact on the production of the gas which the contract contemplates and requires. Thus, the order imposed a condition upon subsequent production by Panoma but had no effect upon gas produced at the time the order was issued.

Throughout its argument appellant places unwarranted emphasis on the fact that Panoma delivers residue gas for transmission in interstate commerce. Even though the deliveries are made "in" interstate commerce or are "a part of" interstate commerce, as appellant asserts, that does not mean that Order

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[10] It was this aspect of the contract that the Oklahoma Supreme Court had in mind when it referred to the contract as providing for the sale of gas "in place" and "before any movement of any kind starts and before anything in the nature of interstate commerce occurs * * *" (R. 176). This is an accurate description of the practical effect of the contract. The validity of the court's observation does not depend on such technical questions as where title passes. Nor does it depend on whether the description of the contract as calling for a sale of gas "in place" is accurate in all respects and for all purposes. The contract in question is governed by Oklahoma law, and is the kind of contract with which the Oklahoma court must be assumed to be peculiarly familiar. Its interpretation of the contract should be accepted by this Court. *Cf.* New York Rapid Transit Corp. v. New York, 303 U.S. 573, 593; Southern Wisconsin Railway v. Madison, 240 U.S. 457, 461.

No. 26,096 is invalid in whole or in part. The fact that the gas moves in interstate commerce is no more a reason for striking down the regulatory measure of the state here than it was in the *Cities Service* case where the gas similarly was destined for interstate markets. Here, as in that case, the order is designed to control production and is made in the interests of conservation. For that reason its validity is not to be determined merely by a reference to the fact that it affects transactions which occur in interstate commerce. See *Parker* v. *Brown*, 317 U.S. 341. In that case the Court upheld the validity under the Commerce Clause of a California proration program setting minimum prices on a raisin crop of which 95% was eventually sold interstate or in foreign commerce (317 U.S. at 359). After discussing the technical question whether the sales were "in interstate commerce" and using the language relied upon by appellant (Brief p. 30), the Court repudiated in the following terms any mechanical test such as is urged by appellant here (317 U.S. at 362-363):

> "Such regulations by the state are to be sustained, not because they are 'indirect' rather than 'direct,' * * * not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character, and the practical difficulties involved, may never be adequately dealt with by Congress. Because of its local character also there may be wide scope for local

> regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause. * * * There may also be, as in the present case, local regulations whose effect upon the national commerce is such as not to conflict but to coincide with a policy which Congress has established with respect to it."

This principle is applicable here. As the Court has pointed out, it was necessary for the Corporation Commission to regulate the production of all the gas in the field or there would be little point in regulating any. *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, 192. This is true because gas accumulates in a common underground reservoir so that conservation can be effective only by rules applicable to the whole of a reservoir regardless of the particular scope or legal nature of the operations of the various producers. The means of regulation chosen by Oklahoma are thus "reasonably adapted" to the legitimate end which the State seeks and the order should be upheld for that reason. See *South Carolina State Highway Department* v. *Barnwell Brothers, Inc.*, 303 U.S. 177, 190.

II.

THE NATURAL GAS ACT DOES NOT DEPRIVE THE STATE OF OKLAHOMA OF THE POWER TO CONSERVE NATURAL GAS BY MINIMUM PRICE REGULATION OF ALL GAS PRODUCED IN THE FIELD INCLUDING THE GAS PRODUCED AND DELIVERED BY PANOMA.

A. THIS COURT SHOULD UPHOLD THE VALIDITY OF ORDER NO. 26,096 SO AS TO PRESERVE BOTH THE PLAN OF REGULATION ENVISAGED BY THE NATURAL GAS ACT AND THE CONSERVATION POWERS OF THE STATE

The only substantial question in this case that is left open by the decision in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, is whether the Natural Gas Act invalidates the order of the Oklahoma Corporation Commission. In *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, this Court construed the Natural Gas Act as authorizing federal regulation of prices charged for gas sold in interstate commerce for resale and delivered after processing into an interstate transmission line. Under this decision the prices of gas delivered by Panoma to appellant are subject to federal regulation. Appellant contends that it necessarily follows that the order here involved is invalid as applied to Panoma's deliveries of gas to appellant.

This argument misconceives the nature of the state regulation that is here involved. The state order imposes minimum price regulation on production in the interests of conservation. This is a different kind of regulation from that which the Federal Power Commission is authorized to impose under the Natural Gas Act. The Federal Power Commission is empowered to prescribe maximum prices for sales in interstate commerce for resale for the purpose of protecting consumers against unreasonably high rates. The State of Oklahoma has not attempted to exercise regulatory

authority of that kind and it is error to treat its order as if it were the equivalent of a rate making order by the Federal Power Commission.

No doubt within the area and for the purposes prescribed by Congress the authority of the Federal Power Commission is paramount and exclusive. *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U.S. 498; *Public Utilities Commission of Ohio* v. *United Fuel Gas Co.*, 317 U.S. 456. But it is equally true that the Natural Gas Act did not deprive the states of their power to regulate the production of natural gas in the interests of conservation. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 509-513; *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 690. On the contrary the statute was designed to confirm the state in the possession and exercise of those powers. Thus, the statute contemplates a system of dual regulation wherein federal and state authority will each play its appropriate role. *Cf. Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Commission*, 341 U.S. 329, 337. The grant of exclusive authority to the Federal Power Commission within the area of its competence does not invalidate or nullify a legitimate exercise by a state of its authority to regulate production in the interests of conservation.

When, as in the instant case, a proper exercise by the state of its authority to fix minimum prices in the interests of conservation reaches transactions which are subject to regulation by the Federal Power Commission, though in a different way and for different purposes, the problem is one of adjusting the two powers so as to preserve the dual system of regulation contemplated by Congress.

In the instant situation adjustment is not prevented by any inevitable and inherent inconsisteney between the two regulatory powers involved. The standards that guide the exercise of the two powers are different but not incompatible. This case need not and should not be decided on the assumption that there is a conflict of regulatory directives. No such conflict exists; Panoma has not been directed to do one thing by the state and a different thing by the Federal Power Commission. Nor is there reason to assume that in the future it will be subject to conflicting orders. This Court should not presume that the Federal Power Commission, in exercising its jurisdiction under the Natural Gas Act, will act in disregard of the legitimate interests of the State of Oklahoma in the conservation of its natural resources. The Federal Power Commission has not appeared in this case. It has not made any contention tha the price order promulgated by Oklahoma is an attempt to deprive the Commission of its jurisdiction over any producer or will in any way conflict with the exercise of the Commission's statutory functions under the rate and service provisions of the Natural Gas Act. Nor should the Court presume that the Corporation Commission of Oklahoma has fixed or will fix minimum prices for the production of natural gas in the Guymon-Hugoton Field that are so high as to transgress the maximum rate standards of the Natural Gas Act.

The Court is not here required to make a jurisdictional choice between two competing authorities each seeking to control the same subject matter in the same way and for similar ends. The Court can here sustain the state's exercise of its conservation authority without usurping or interfering with any authority conferred upon the federal agency. It is, of course,

conceivable that in the future here or in some other instances a state minimum rate order made in the interests of conservation may, as applied to particular transactions, conflict with a maximum rate order made by the Federal Power Commission. But if any such situation should ever arise it will not represent a conflict of jurisdictions since both state and federal agency will each be acting within the sphere allocated to it by the statute. It will be time enough to solve the problems created by specific conflicting directives when the problems arise.[11] Until that time comes the theoretical possibility of such conflicts does not justify striking down a legitimate exercise of state power made within

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[11] In State Corporation Commission of Kansas v. Federal Power Commission, 206 F. 2d 690 (8th Cir. 1954), cert. denied 346 U.S. 922, an alleged specific conflict between a state minimum price order and federal rate regulation was resolved without serious disruption of either state or federal power because the conflict was treated in the light of a particular case and as part of the issues raised by the regulation of a particular company. In that case it was contended that the actual cost method of rate regulation followed by the Power Commission conflicted with the Kansas order setting a minimum price to be realized at the wellhead by producers in the Kansas portion of the Hugoton Fields. Because the company involved was selling the gas at a price in excess of the minimum fixed at the wellhead and the only question was what cost the company should be allowed in the computation of its rate base, it may be doubted whether any conflict in fact existed. See the opinions of Commissioners Buchanan and Smith in Docket Nos. G-1382, G-1533, G-1607, In the Matters of Northern Natural Gas Company. The Commission's rate order was upheld by the United States Court of Appeals for the 8th Circuit, 206 F. 2d 690. At the same time the efficacy of the Kansas statute was only partially impaired, if at all, since no general or abstract attack upon its constitutionality was made.

the conservation area which has been reserved for state action.[12]

This Court in the past has had occasion to consider contentions that state regulatory action taken within the area reserved to the states under the statute is inconsistent with federal authority because it affects activities which are also subject for some purposes to federal regulation. This Court has refused to accept those contentions or to strike down state power in the absence of a showing that there is an immediate conflict of directives.

In *Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Commission*, 341 U.S. 329, the question was whether the state could validly require Panhandle to obtain a certificate of public convenience and neces-

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[12] Compare the situation in Parker v. Brown, 317 U.S. 341, 352-358, where this Court interpreted the Agricultural Marketing Agreement Act (50 Stat. 246, 7 U.S.C. § 601 *et seq.*) as contemplating the existence of state marketing programs "at least until such time as the Secretary shall establish a federal marketing program" (317 U.S. at 354). See also Buck v. California, 343 U.S. 99, 102.

If a direct and specific conflict should ever arise between a state conservation order prescribing minimum prices and a maximum rate order of the Federal Power Commission, the Court would be faced with the question whether Congress intended that the federal or the state order should prevail. The Court has previously indicated that the history of the Natural Gas Act shows that Congress intended that federal power and not the state power should retreat when a federal order is inconsistent or a substantial interference with the exercise of the state's conservation powers. See Interstate Natural Gas Co. v. Federal Power Commission, 331 U.S. 682, 690. But even if it should be assumed that the federal order should prevail in the case of a direct conflict between specific orders directed to a particular company, it does not follow that a state minimum price order should be declared invalid, either generally or as applied to any company, until a direct and specific

sity before selling natural gas to industrial consumers in a municipality already served by another public utility. Such direct sales to industrial consumers are not subject to regulation under the Natural Gas Act. By reason of its other activities, however, Panhandle was a natural gas company and was being regulated by the Federal Power Commission. Under the Natural Gas Act Panhandle was required to obtain from the Federal Power Commission a certificate for the construction and operation of the facilities to be used in delivering the gas to the particular industrial consumers involved. In other words, to engage in the activity which the state was seeking to regulate Panhandle also had to obtain the statutory sanction of the Federal Power Commission. Even so, this Court sustained the validity of the state regulation.

The Court's opinion emphasized that Congress had not gone to the full extent of its power in the Natural Gas Act but had on the contrary "occupied only a part of the field." (341 U.S. at 334). The Court observed that this contemplated dual regulation which might in some instances result in an overlap of, or even a conflict between, state and federal regulatory action. Nevertheless the Court held that that possibility did not require invalidation of state action operating in a field other than the field exclusively reserved for federal

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conflict occurs. At the very least the plan of regulation contemplated by Congress in the Natural Gas Act is to be regarded as analogous to the dual regulation created by Sections 13(3) and 13(4) of the Interstate Commerce Act (41 Stat. 484 (1920); 49 U.S.C. §§ 13(3), 13(4). These sections grant the Interstate Commerce Commission authority to raise intrastate rates to prevent discrimination against interstate commerce but contemplate that state regulations of the same rates will remain effective until the Commission issues a conflicting order. See Simpson v. Shepard (The Minnesota Rate Cases), 230 U.S. 352.

regulation, at least in the absence of direct proof of conflict by way of "opposing directives." (341 U.S. at 336). The opinion relied on the decision in the *Cities Service* case, 340 U.S. 179, which upheld Oklahoma's 7¢ minimum price order, to show that Panhandle's interstate activities did not free it from state regulation. Any other result would fail to "accomplish the effective dual regulation Congress intended, and would permit appellant to prejudice substantial local interest." (341 U.S. at 337).

In its opinion the Court also quoted from *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission of Indiana,* 332 U.S. 507. In that case the Court had held that the State of Indiana could regulate direct industrial sales by an interstate transmission company whose transportation activities and sales for resale in interstate commerce were at the same time being regulated by the Federal Power Commission. The Court emphasized the division of regulatory authority over natural gas between federal and state authority in the following terms (332 U.S. at 519-520):

> "It would be an exceedingly incongruous result if a statute so motivated, designed and shaped to bring about more effective regulation, and particularly more effective state regulation, were construed in the teeth of those objects, and the import of its wording as well, to cut down regulatory power and to do so in a manner making the states less capable of regulation than before the statute's adoption. * * *
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> "The Natural Gas Act created an articulate legislative program based on a clear recognition of the respective responsibilities of the federal and

> state regulatory agencies. It does not contemplate ineffective regulation at either level. We have emphasized repeatedly that Congress meant to create a comprehensive and effective regulatory scheme, complementary in its operation to those of the states and in no manner usurping their authority. * * *"

The *Indiana* and *Michigan* cases were concerned with the provisions of the Natural Gas Act exempting local distribution of natural gas from regulation. The structure of the jurisdictional sections of the Act shows that the principle applied in those cases should apply as well to state measures which regulate production in the interests of conservation because those measures relate to an activity, production and gathering, which is also exempt from regulation.

Section 1(b) of the Act first describes what the Act applies to. It says that the Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale, and to companies engaged in such transportation or sale. It is this provision of Section 1(b) which subjects Panoma's sales of gas to appellant to federal rate regulation.

The second half of Section 1(b), however, specifies the fields of natural gas regulation to which the Act does not apply. The first such field is the local distribution of natural gas. This is the exempted field in which the states were acting in the *Indiana* and *Michigan* cases, *supra*. Parallel to that exemption and following after it is the exemption of "the production or gathering of natural gas." The state order here involved regulates the activity of production and hence falls within this exemption. The following statement

in the *Panhandle Indiana* case, treating the exemptive language of Section 1(b) as constituting a congressional affirmation of the existence of state power in the field of local distribution, is therefore also applicable, by reason of the structure of Section 1(b), to the exercise of state power that is here involved (332 U.S. at 521):

> "The Natural Gas Act therefore was not merely ineffective to exclude the sales now in question from state control. Rather both its policy and its terms confirm that control. More than 'silence' of Congress is involved. The declaration, though not identical in terms with the one made by the McCarran Act, 59 Stat. 33, 15 U.S.C. § 1011, concerning continued state regulation of the insurance business, in in effect equally clear, in view of the Act's historical setting, legislative history and objects, to show intention for the states to continue with regulation where Congress has not expressly taken over. Cf. *Prudential Ins. Co.* v. *Benjamin*, 328 U.S. 408. Congress has undoubted power to define the distribution of power over interstate commerce. *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761, 769, and authorities cited; cf. *Prudential Ins. Co.* v. *Benjamin, supra.* Here the power has been exercised in a manner wholly inconsistent with exclusion of state authority over the sales in question."

This Court has indicated in dealing with the production and gathering exemption that it considers that exemption to block out a field of regulation in which Congress intended affirmatively that the states and not the federal government should act. *Federal Power*

Commission v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498; *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 690. In the *Panhandle* case the Court said (337 U.S. at 509-513):

> "The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states. This probably occurred because the state legislatures, in the interests of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas. The Natural Gas Act was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other. Congress enacted this Act after full consideration of the problems of production and distribution. It considered the state interests as well as the national interest. It had both producers and consumers in mind. Legislative adjustments were made to reconcile the conflicting views."

We are not suggesting that Panoma's sales to appellant are immune from federal regulation by reason of the production or gathering provision of Section 1(b). That point is settled by *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672. The issue here is not the extent of federal power but the existence of state power to regulate the physical activity of production in the interests of conservation. The production or gathering language of Section 1(b), as construed and applied by this Court, shows that Congress intended that a state should be free to regulate the activity of production. Order No. 26,096, even though it operates on price, is a

regulation of the physical activity of production. The scope of federal power need not be considered unless and until the state order conflicts with a specific directive issued by the Federal Power Commission. No such conflict exists and the order of the State of Oklahoma should be sustained.

B. A DECISION UPHOLDING ORDER NO. 26,096 WILL ACHIEVE THE INTENT OF CONGRESS TO PROTECT AND PRESERVE THE CONSERVATION POWERS OF THE STATES

This Court has said that it will not attribute to Congress a purpose to displace state legislation in the absence of a specific expression of intent. *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board,* 336 U.S. 301, 312; *California* v. *Zook*, 336 U.S. 725, 733. The legislative history of the Natural Gas Act shows beyond question that Congress expressly intended not to supersede or interfere with state authority over conservation problems. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.,* 337 U.S. 498, 509-513; *Interstate Natural Gas Co.* v. *Federal Power Commission,* 331 U.S. 682, 690; *Federal Power Commission* v. *Hope Natural Gas Co.,* 320 U.S. 591, 612-613.

The Natural Gas Act states in Section 1(a) that it is based upon disclosures made by the Report of the Federal Trade Commission pursuant to Sen. Res. 83, 70th Cong., 1st Sess. (1928). That Report covered in detail the problems of the natural gas industry. It emphasized the powerful position of the transmission companies and the effect of the position and practices of those companies on the conservation efforts of the states (Report pp. 112-113, 610, 613-614). Its recommendations in this area specifically endorsed principal reliance upon state and not upon federal action in the

field of conservation. Primary responsibility was placed in state measures such as ratable taking and common purchaser statutes, unitization and proration, to be reenforced if necessary by a federal statute designed to do no more than prohibit the introduction into interstate commerce of gas produced in violation of the state acts (Report p. 616).

Moreover, each of the three reports made by the Congressional Committees recommending enactment of natural gas legislation stated in so many words that the Act was designed not to oust the states of any authority. These reports stated flatly, with only minor variations in language, that the bill took no authority from the state commissions and was so drawn as to complement and in no sense usurp state regulatory authority. H.R. Rep. 2651, 74th Cong., 2d Sess., p. 1 (1936); H.R. Rep. No. 709, 75th Cong., 1st Sess., p. 2 (1937); Sen. Rep. No. 1162, 75th Cong., 1st Sess., p. 2 (1937).[13]

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[13] The basic congressional purpose was recently affirmed by the last Congress. In 1954 an amendment to Section 1 of the Natural Gas Act was enacted providing that the Act should not apply under certain conditions to persons transporting gas wholly within one state so long as their activities were certified to be subject to the state regulatory authority. 68 Stat. 36 (1954). The Senate Committee on Interstate and Foreign Commerce, reporting in favor of this bill, stated that its purpose was to reaffirm the original intent of Congress in enacting the Natural Gas Act—"namely, that the Act was to supplement, and not supplant State regulation." Sen. Rep. No. 817, 83rd Cong., 1st Sess., p. 1 (1953). Similar language was used by the House Committee (H. R. Rep. No. 899, 83rd Cong., 1st Sess., p. 1), and in the previous Congress a report from the Senate Committee referred back to the original Senate Report on the Natural Gas Act (Sen. Rep. No. 1162, 75th Cong., 1st Sess.) and quoted particularly the language of that Report that there was no intention to disturb the states in the legitimate exercise of the regulatory functions. Sen. Rep. No. 1460, 82nd Cong., 2d Sess., p. 5 (1952).

The statements of the persons in charge of the legislation in both the House and the Senate show that there was no question of intruding in any way upon any state power. In the House the bill was in charge of Congressman Lea, its author and the Chairman of the House Committee on Interstate and Foreign Commerce. At the beginning of his statement on the bill, Lea said expressly that the "bill takes nothing from the State Commissions; they retain all the State power they have at the present time." 81 Cong. Rec. 6721. In the Senate the bill was in charge of Senator Wheeler, the Chairman of the Senate Committee on Interstate Commerce which had reported on the bill. During the debates, in answer to a question from Senator King, Senator Wheeler stated that he wanted "to say to the Senator that, as a matter of fact, the bill does not interfere with the State regulation, in any way, shape, or form." 81 Cong. Rec. 9312.

Appellant points to the fact that each of the Committee Reports made on the legislation prior to its passage stated that the basic purpose of the bill was "to occupy this field in which the Supreme Court has held that the states may not act." See, for example, H. R. Rep. No. 709, 75th Cong., 1st Sess., p. 2. Appellant's reliance on this language overlooks the congressional identification of the "field" which federal power was to occupy. The field is described as one in which the states could not act. It was as apparent in 1936 and 1937 as it is now that one field in which the states have full freedom to act is the field of conservation. At the time the statute was under consideration the producing states had enacted and were enforcing comprehensive regulatory schemes for the conservation of gas. See *Federal Power Commission v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498.

512-513. This Court had not then been called upon to decide whether a state in the exercise of its conservation powers could impose minimum prices on the production of gas destined for interstate commerce. Accordingly, although there were no decisions holding such state regulation invalid, there were no decisions expressly upholding it.

This Court had held however that a state proration program was not invalid under the Commerce Clause because it applied to oil destined for sale in interstate commerce. *Champlin Refining Co.* v. *Corporation Commission of Oklahoma*, 286 U.S. 210, 235. See also *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55, 77.[14] State measures regulating the production and use of natural gas had also been upheld by this Court against attacks based on the Fourteenth Amendment. *Ohio Oil Company* v. *Indiana (No. 1)*, 177 U.S. 190; *Walls* v. *Midland Carbon Co.*, 254 U.S. 300; *Bandini Petroleum Co.* v. *Superior Court, Los Angeles County, Calif.*, 284 U.S. 8; *Henderson Co.* v. *Thompson*, 300 U.S. 258. In these cases the Court recognized the special interest of the states in natural gas as an exhaustible natural resource and the "essentially local character" of its regulation. At the time the Natural Gas Act was passed it was recognized that the validity of state regulation under the Commerce Clause as well as under the Fourteenth Amendment depended in large part on the nature of the local interest which the state was seeking to protect. For

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[14] In the Thompson case, the Court in speaking of the state's power to impose proration cited the Champlin case and said (300 U.S at 77):

> "And the fact that plaintiffs' gas is to be sold in interstate commerce would not preclude such exercise of the state's power."

that reason the decisions under the Fourteenth Amendment are relevant in any consideration of the scope of state power under the Commerce Clause as it existed prior to the passage of the Act. Compare *South Carolina State Highway Commission* v. *Barnwell Brothers, Inc.*, 303 U.S. 177, 190, and cases cited. As early as 1896 this Court had recognized the special interest of the states in conserving exhaustible natural resources when it upheld, against attacks based on the Commerce Clause, state regulation of traffic in wild game. See *Geer* v. *Connecticut*, 161 U.S. 519; *New York ex rel. Silz* v. *Hesterberg*, 211 U.S. 31.

The decisions in *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83, and *Missouri* v. *Kansas Natural Gas Co.*, 265 U.S. 298, which were cited in the Committee Reports as marking the limits of the gap that Congress intended to fill, did not relate to the validity of state minimum price regulation for conservation purposes. Indeed the regulation involved in these cases was not conservation regulation in any sense. In both cases the state regulation was designed to protect the economic interests of particular groups of citizens of the state and in both cases the state had attempted to protect that economic interest by the direct regulation of interstate commerce. The decision in the *Kansas Natural Gas Co.* case held invalid an attempt by a consuming state to regulate a sale for resale made by an interstate transmission company of gas brought by it into the state from other states—a typical city-gate transaction now regulated by the Power Commission. In the *Attleboro* case the regulation involved was attempted by the producing state but the commodity involved was mechanically produced electric power and not an exhaustible natural resource so that no problem of conservation

was involved. The local interest asserted by the producing state was not an interest in the conservation of its own exhaustible natural resources but rather an interest in fixing the price on a sale made at the border of the state for the purpose of protecting the economic interests of consumers of electric power within the state.

It thus appears that if state power is viewed in terms of the constitutional principles that were current in 1936 and 1937 there is no basis for asserting that at that time the states lacked power to impose minimum price regulation on the production of natural gas in the interests of conservation even though the gas was destined for sale in interstate commerce. But even if it should be assumed that in 1936 and 1937 the existence of such power was doubtful, that assumption would be irrelevant in determining what effect the Natural Gas Act has on the scope of the conservation powers that the states possess today. The regulatory power with which Congress was concerned when it enacted the Natural Gas Act was the power to impose public utility regulation on rates for the purpose of protecting consumers. The gap in regulatory authority that it intended to close was a gap in the authority to impose public utility regulation and the field that it intended to occupy was the field of public utility regulation. It follows that the only power of the states that should be viewed in terms of its status in 1936 and 1937 is the power of the states to impose public utility regulation. Consideration of that power as it existed in 1936 and 1937 is relevant for only two purposes: first to determine the scope of the authority of the Federal Power Commission to impose utility rate regulation and second to determine what authority the

statute left in the states to impose utility rate regulation.

It would be improper therefore to measure the conservation powers of the state today by reference to constitutional doctrines that were prevalent when the Natural Gas Act was passed. To do so would be to assume that Congress intended to fill with federal power a supposed gap in the constitutional power of the states to regulate for conservation purposes in the same way that it intended to fill with federal power a specific gap in the constitutional power of the states to impose public utility rate regulation on natural gas companies. Both the face of the Act and its legislative history belie this assumption.

There is no merit in appellant's argument that *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, holds that a state has no authority to regulate production in the interests of conservation by fixing minimum prices for gas that is destined to move in interstate commerce. That question was not before the Court in that case. The question there presented was whether the Federal Power Commission was authorized by the Natural Gas Act to impose utility rate regulation on sales of natural gas made into an interstate transmission line after gathering and processing. So far as concerns any discussion of the constitutional power of the states the Court's opinion is directed to the question of the power of the states at the time of the passage of the Act to impose similar utility rate regulation on sales in interstate commerce for resale.

The opinion in the *Phillips* case does not hold that the *Cities Service* case was wrongly decided nor does it suggest that the existence of jurisdiction to impose utility rate regulation possessed by the Federal Power

Commission necessarily deprives the states of the power to exercise the regulatory authority for conservation purposes which the *Cities Service* case held they possessed. The Court in speaking of the *Cities Service* case described it as upholding "state *minimum* price orders justified as conservation measures applying to sales of natural gas in interstate commerce." (347 U.S. at 684). By thus emphasizing the word "minimum" and by referring to the conservation character of the regulation the Court appears to have recognized the essential difference between the kind of conservation regulation involved in this case and in the *Cities Service* case and the maximum rate public utility regulation authorized by the Natural Gas Act that was involved in the *Phillips* case. The *Phillips* decision, therefore, although authoritative in establishing federal authority to impose the one kind of regulation is not an authority for the proposition that the states lack authority to impose the other.

CONCLUSION

The order which is attacked here is a regulation on the taking of gas from the Guymon-Hugoton Field. It is a regulation promulgated by the State of Oklahoma for the purpose of the prevention of waste of an exhaustible natural resource and it is imposed upon the physical act of production. Its fundamental constitutional validity is not open to question. *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 172. The formula applicable to a producer such as Panoma delivering gas not at the wellhead but at the conclusion of gathering and after extraction of liquid hydrocarbons is an appropriate and reasonable means of achieving the order's lawful purpose. On the facts as found by the Corporation Commission and affirmed

by the Supreme Court of Oklahoma, invalidation of the order would make nugatory and futile the power of the state to impose minimum price regulation on the production of natural gas. That result would conflict with the constitutional doctrines traditionally controlling federal-state relationships. It would also conflict with the intent of Congress as that intent is reflected in the legislative history of the Natural Gas Act; at the very least Congress intended state conservation measures to stand until there occurs a clear and present conflict between existing federal and state orders.

For all of the foregoing reasons the judgment of the Supreme Court of Oklahoma should be affirmed.

Respectfully submitted,

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APPENDIX A

PERTINENT PROVISIONS OF NATURAL GAS ACT

NATURAL GAS ACT OF JUNE 21, 1938, 52 STAT. 821-833; AS AMENDED MARCH 27, 1954, 68 STAT. 36

SECTION 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas. [52 Stat. 821 (1938); 15 U. S. C. § 717 (1946)]

(c) The provisions of this Act shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this Act by this subsection are hereby declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and in exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction. [68 Stat. 36 (1954)]

APPENDIX B

PERTINENT PROVISIONS OF OKLAHOMA STATUTES AND ORDER NO. 26,096

The Natural Gas Act of 1913, Title 52, O.S.A., Sections 231 to 233, inclusive, read as follows:

Section 231:

> "All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state." (Laws 1913, Ch. 198, p. 439, Sec. 1).

Section 232:

> "Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well." (Laws 1913, Ch. 198, p. 440, Sec. 2).

Section 233:

> "Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said

gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree to such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas." (Laws 1913, Ch. 198, p. 440, Sec. 3).

The 1915 Ratable Taking Act, Title 52, O.S.A., Sections 239, 240 and 243, read as follows:

Section 239:

"Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another." (Laws 1915, Ch. 197, Sec. 4).

Section 240:

"Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser

thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all of the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade." (Laws 1915, Ch. 197, Sec. 5).

Section 243:

"The Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents, with the consent of the Governor, as may be necessary to enforce this Act." (Laws 1915, Ch. 197, Sec. 8).

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3628

Order No. 26096

In the Matter of the Application of Certain Mineral Owners in Texas County, Oklahoma, for an order determining the minimum price at which gas produced from the Guymon-Hugoton Field may be first purchased or sold.

* * * *

ORDER

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic foot plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than 9.8262¢ per thousand cubic feet.

2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of gathering contemplates that said residue gas will contain at least 950 British Thermal Heating Units per cubic feet of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above, the minimum price for such gas shall be in the proportion that the British Thermal Heating Units of such gas is to 950 per cubic foot.

3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60° F.).

4. This order shall become and be effective the 1st day of August, 1952.

Done and performed by the Corporation Commission of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 29 day of July, 1952.

Corporation Commission of Oklahoma
(S) Reford Bond, Chairman
Ray O. Weems, Vice-Chairman
Ray C. Jones, Commissioner.

Attest: (S) Tom McMurray, Secretary